

REMARKS

This is intended as a full and complete response to the Final Office Action dated August 24, 2004, having a shortened statutory period for response set to expire on November 24, 2004. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-41 are pending in the application. Claims 1-41 remain pending following entry of this response.

Claims 1-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Tedesco et al.* (US 6,085,888, hereinafter *Tedesco*) in view of *Freeney, Jr.* (US 6,490,443, hereinafter *Freeney*) and further in view of *Stone et al.* (US 6,446,045, hereinafter *Stone*). Applicants respectfully traverse the rejection.

Each of Applicants' pending claims recite a method for operating a reservation control system wherein the system, upon receiving a request from a computer, determines if the requested item is available at a vending machine, and if so, reserves the item at that vending machine. The Examiner now concedes that neither *Tedesco* nor *Freeney* teach reserving a vending machine item to ensure availability of the item in satisfaction of the reservation request. However, the Examiner argues as follows:

"It would have been obvious to employ the teachings of *Freeney* with the invention of *Tedesco* to allow users to employ a network to allow users to use multiple vending machines and to place an order through a computer or wireless phone for convenience. It would have been obvious to one of ordinary skill in the art to utilize ensure the availability of an item or a product as taught by *Stone* into the combined device of *Tedesco* and *Freeney* because it would allow a buyer to get possession of the reserved item even if there is a change in the availability of said item." (Examiner's action, page 3.)

Respectfully, Applicants submit that the Examiner errs in this conclusion for the reasons that follow. A *prima facie* case of obviousness under 35 U.S.C. 103(a) requires that "there must be some suggestion or motivation... to modify the reference or to combine reference teachings." MPEP § 2143. In this case, Applicants submit that there is no motivation to combine in the manner suggested by the Examiner. *Freeney* teaches short-range communications that can occur within a predetermined distance between a wireless device and a vending machine. (See, e.g., Col. 30, lines 2-11; and Figure 28.) Thus, the vending machine is only operable by the user of a wireless device

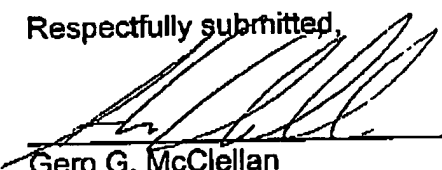
Page 8

when the user is within the predetermined distance. (See, e.g., Figure 28.) This distance is necessarily one allowing the user immediate access to the vending machine because the item(s) purchased and dispensed must be immediately retrieved by the user. In fact, the purpose of the *Freeney* invention is only to provide a means of payment for the vending machine items. (See, e.g., Col. 30, lines 56-60.) The user must still have physical access to the vending machine to make the item selections using the physical interface (e.g., keypad) of the vending machine. Accordingly, not only does *Freeney* not teach reserving an item at a vending machine (as the Examiner concedes), *Freeney* teaches away from any suggestion of reservation because reservation is necessarily counter to immediate purchase and retrieval at the vending machine. That is, since the user of *Freeney* is physically at the vending machine making the purchase and expecting the item to be dispensed, a reservation of the item is nonsensical since the user would then not receive the purchased item. Therefore, a person skilled in the art would not be motivated to combine *Freeney* with the other cited references as suggested by the Examiner. Since Applicants believe *Freeney* cannot be combined as suggested, the rejection is believed to have been overcome and a detailed discussion of the other references is not required. Accordingly, Applicants respectfully request that the rejection be withdrawn and the claims be allowed.

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the office action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this office action.

Having addressed all issues set out in the Final Office Action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



Gero G. McClellan
Registration No. 44,227
MOSER, PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicant(s)